

MEETING RECORD

NAME OF GROUP: City Board of Zoning Appeals

DATE, TIME AND

PLACE OF MEETING: Friday, March 25, 2005, 1:30 p.m., Hearing Chambers, County-City Building, 555 South 10th Street, Lincoln, Nebraska

MEMBERS AND OTHERS

IN ATTENDANCE:

Members: George Hancock, Gerry Krieser, Bob Kuzelka and Tom Wanser. Gene Carroll absent.

Others: Terry Kathe (Building & Safety), Tonya Skinner (City Law Dept.), Becky Horner and Michele Abendroth (Planning Dept.), applicants and other interested parties.

STATED PURPOSE

OF THE MEETING: Regular Meeting of the City Board of Zoning Appeals

George Hancock called the meeting to order at 1:35 p.m.

Approval of the minutes of the January 25, 2005 meeting

The January 25, 2005 minutes were approved with the following correction: on page 3, the sentence "Carroll voted to deny this application" was changed to "Carroll *moved* to deny this application." Hancock, Krieser and Wanser voting 'yes'; Kuzelka abstaining; Carroll absent.

Appeal No. 05003 by Dan Rudolph and Vivian Smith for a variance of the rear yard setback on property generally located at 4211 S. 33rd Street.

PUBLIC HEARING

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Renee Sjulín, Vice-President of Runza National, stated that they are formally requesting a change in the rear yard setback at 33rd and Pioneers. The current buildings were built with a 20 foot setback. Since those buildings were constructed, the zoning laws have changed to a 30 foot setback. They would like to demolish the Dairy Queen and storage shed and add on to the strip center utilizing the same building line with the 20 foot setback. They would like to add a Braeda Fresh Express Café. Wendell Hendrix, residential owner of the property west of the Dairy Queen, supports the addition and the change in the rear yard setback. The current buildings were constructed with a 20 foot setback, and they feel this would have no adverse affect on the neighboring properties. They also feel that it would provide a safer traffic flow in the parking lot. They have met with the tenants of the existing strip mall owners, who were very supportive of the strip center getting a face-lift. The strip center has existed for more than 20 years with minimal improvements to it. They feel that neighborhood revitalization is a positive aspect to any neighborhood and will increase property values. They believe there are unusual circumstances which would allow granting this appeal.

Hancock asked if there was further testimony in favor of or against this appeal. With no one appearing further, Hancock closed the hearing.

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Wanser stated that he is seeing some strange things with this property. This is a building built prior to current zoning. In order to improve the property, it doesn't seem feasible to have a jog in the building. It is highly unusual.

Wanser moved approval, seconded by Kuzelka.

Wanser stated that this is a very unusual situation, and the property is in need of a face lift.

Hancock stated that this is a difficult case. There are no peculiar or unusual circumstances with the lay of the land. However, the property is in need of improvement. He raised the question of parking. Kathe stated that they have not seen a parking drawing, so they cannot comment on that. Wanser stated that parking needs to be addressed, but that is not what we are here for.

Kuzelka asked if the change in terrain can be part of the screening. Horner stated changes in grade count toward screening. If there is a parking stall adjacent to a residential district, the required screening is 90% coverage from 2-4 feet. From what she observed on-site, the grade change probably would count for all of the required screening. The commercial district already has a screening requirement of 60% coverage from 0-10 feet, so any parking stall screening would be covered by the commercial screening requirement.

Hancock asked what would happen if the addition were built 10 feet further to east to meet the current could and the same size maintained. Dan Rudolph, Construction Manager for Runza, stated that he believes it would impact the visibility and the traffic flow of the lot even more.

The application was held over until the next meeting due to a tie vote of 2-2 on the motion to approve. Hancock and Krieser voting 'no'; Kuzelka and Wanser voting 'yes'; Carroll absent.

Appeal No. 05006 by Better Living Patio Rooms and Kevin and Barbara Donahoo for a variance of the front yard setback on property generally located at 6961 La Salle Street.

PUBLIC HEARING

March 25, 2005

Mark Hunzeker, appearing on behalf of Kevin Donahoo, stated that this appeal is to reduce the required front yard setback at 6961 La Salle Street from 41.16 feet to 36.7 feet. The underlying R1 zoning district requires a 30 foot setback, but the additional height and area regulations, because of the existing setbacks of the properties between Bernese and La Salle, require this property to set back in conformance with those properties which are set back at approximately 41 feet. The property on the north side of La Salle is set back 30 feet. The three properties along 70th between Bernese and La Salle are set back more than 30 feet, with 2 being set back 41.16 and the subject property is at approximately 50 feet. The property on the south side is set back at 30 feet. Only the middle property on 70th Street has a 70th Street address. Both the subject property and the other end of the block face La Salle or Bernese. This is a very unique circumstance, and this section of the zoning codes comes into play rarely. It is unusual because there is only one property in the block that faces the street where the section is being applied. Ordinarily, it is intended to provide for uniform setbacks for properties that face the same street. The Donahoo property is on a corner lot which has a relatively narrow rear yard setback. It has a front yard required on both 70th Street and La Salle. The request is for the purpose of building a sunroom on the east side to replace an existing open deck. The deck is uncomfortable to use because of the noise on 70th Street. Denial of this variance would result in a room that would only be 9.5 by 26 feet, which would make for a very difficult

room to use.

Hunzeker continued by stating that there is a peculiar, exception and unusual circumstance with respect to this property which is generally not found in the neighborhood. This variance will not change the district map, will not impair adequate supply of light and air to adjacent properties, will not increase congestion in the public streets, will not increase the danger of fire and safety, and will not materially diminish or impair the established property values in the surrounding area.

Hunzeker concluded by stating that all of the neighbors are in favor of this application.

Hancock asked if there was additional testimony in favor of this appeal.

Kevin Donahoo, owner of the property, stated that he communicated with all the neighbors adjacent to him, and each of them provided a letter of support for this application. He submitted to the record these letters of support.

Hancock asked if there was further testimony in favor of or against the appeal. With no one appearing further, Hancock closed the hearing.

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Krieser moved for denial because it does not fit the land right to stick out farther. Hancock seconded. Krieser stated that land lay should stay the same on the whole block. Even though the neighbors don't object, we cannot consider that.

Kuzelka stated that it is meeting what it directly across the street from them and it is not changing the facade on La Salle Street. Wanser stated he agrees with Kuzelka. He added that 70th Street creates a tremendous handicap for this project because of the noise. The neighborhood has 30 foot setbacks, although this block does not.

Kuzelka asked if the deck could be built if there were another lot to the east of this lot. Kathe stated that it would change all of the setbacks. If it is not a corner lot, they only have to provide one front yard. If it is a corner lot, you have to provide two front yards. It is all based on the frontage of 70th Street, which is dictating what the setback is along that street.

Hancock stated that the Board is allowed to consider air, light and noise respective to the peculiar and unusual circumstances. He is debating if that is a strong enough argument, and he believes it is.

Motion for denial failed 1-3. Hancock, Kuzelka and Wanser voting 'no'; Krieser voting 'yes'; Carroll absent.

Wanser moved approval of the application. Skinner advised Wanser to withdraw his motion and make a new motion to include what is peculiar, unusual or exceptional in order to meet the legal requirements of the Board.

Wanser withdrew his motion and then moved approval because the property has the unusual characteristics of sitting on the corner of 70th and La Salle and the conditions are unusual particular to the neighborhood. Kuzelka seconded.

Motion for approval carried 3-1. Hancock, Kuzelka and Wanser voting 'yes'; Krieser voting 'no'; Carroll

absent.

Appeal No. 2379 by Cameron Hill for a variance of the rear yard setback on property generally located at 3201 Arbor Road.

Krieser moved to table this application until the next meeting or until further direction from the applicant, seconded by Wanser. Hancock, Krieser, Kuzelka and Wanser voting 'yes'; Carroll absent.

Hancock adjourned the meeting at 2:29 p.m.

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